

COMMONWEALTH of VIRGINIA

JUL 0 2 2018 DEQ SWRO

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

Coperion Corporation FOR THE Coperion Corporation Facility EPA ID No. VAR000532846

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Coperion Corporation, regarding the Coperion Corporation Facility located at 285 Stafford Umberger Drive and 196 Appalachian Drive (contiguous properties), in Wytheville, Virginia, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

- 1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
- 2. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-81-10.
- 3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
- 4. "Coperion" means Coperion Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Coperion Corporation is a "person" within the meaning of Va. Code § 10.1-1400.
- 5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

- 6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
- 7. "Facility" means the Coperion Corporation Facility located at 285 Stafford Umberger Drive and 196 Appalachian Drive, Wytheville, Virginia; the contiguous properties front on two different streets but are both covered by EPA ID Number VAR000532846.
- 8. "Generator" means a person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
- 9. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
- 10. "LQG" means a large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. See 40 CFR § 262.34(a)-(b) and (g)-(l).
- 11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
- 12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
- 13. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq*. Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
- 14. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
- 15. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. See 40 CFR § 262.34(d)-(f).
- 16. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
- 17. "Va. Code" means the Code of Virginia (1950), as amended.
- 18. "VAC" means the Virginia Administrative Code.
- 19. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

20. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

- 1. Coperion owns and operates the Facility in Wytheville, Virginia. The Facility manufactures and machines extruder parts from block metal, including steel and stainless steel. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
- 2. Coperion was assigned VACESQG No. VACESQG11708 at the time of the inspection. Coperion submitted a RCRA Subtitle C Site Identification Form (received October 20, 2017) that gave notice of regulated waste activity at the Facility as a CESQG of hazardous waste. On November 14, 2017, DEQ issued Coperion EPA ID No. VAR000532846 for the Facility. On December 1, 2017, Coperion notified as a SQG (for May 2017) and on January 30, 2018, Coperion notified as a LQG of hazardous waste.
- 3. At the Facility, Coperion generates the following wastes. Each listed hazardous waste has associated waste code(s) as described in 40 CFR §§ 261.21, 261.24 and 261.31. The hazardous wastes are accumulated in containers at the Facility after each is generated.

Punctured aerosol cans

Scrap metal

Oil Filter Cake containing metal fines – possibly hazardous when chrome/stainless processed Mixed Flammable Liquids from aerosols and spray booth – $D001\,$

Used Oil

Spent Parts Washer Solvent - high flash

Paint Booth Filters – uncharacterized

4. On May 30, 2017, DEQ staff conducted a Compliance Evaluation Inspection ("CEI") at the Facility. The Facility's machining operation occasionally uses stainless steel as a raw material metal. Stainless steel is known to contain approximately 10% chromium. Metal fines from the machining operation are picked up in the oil circulating system and filtered out in the diatomaceous earth filter cake material. As of the time of the inspection, this filter cake was being disposed as solid waste. Prior to the inspection conducted on May 30, 2017, a proper hazardous waste determination had not been made on the filter cake waste stream from its most recent production run.

40 CFR §262.11, as referenced by 9 VAC 20-60-262.11, states in part: "A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste..."

40 CFR §261.20 states in part: "(a) A solid waste, as defined in §261.2, which is not excluded from regulation as a hazardous waste under §261.4(b), is a hazardous waste if it exhibits any of the characteristics identified in this subpart."

- 5. Following the CEI, DEQ issued a WL to Coperion on July 10, 2017 for failure to make a hazardous waste determination for the filter cakes generated by its machining operation. As a result of the inspection and the WL, Coperion had its filter cake analyzed for the characteristics of hazardous waste. Coperion submitted a failed TCLP analysis for filter cake waste on July 17, 2017. The analysis showed the filter cake to be hazardous waste for the toxicity characteristics for Chromium, D007.
- 6. As a result, DEQ determined that Coperion was a LQG of hazardous waste and additional violations observed during the CEI were noted. It was later determined that Coperion was a SQG, not a LQG, at the time of the inspection.
- 7. At the time of the inspection hazardous waste containers of filter cake were not dated with the first date of accumulation.
 - 40 CFR 262.34(a)(2) states "Accumulation time. (a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: (2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container."
- 8. At the time of the inspection hazardous waste containers of filter cake were not labeled with the words "Hazardous Waste."
 - 40 CFR 262.34(a)(3) states: "Accumulation time. (a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: (2) While begin accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"."
- 9. Prior to the inspection, a Notification of Regulated Waste Activity had not been submitted to DEQ, and no EPA Identification Number had been obtained.
 - 40 CFR §262.12 states: "EPA identification numbers. (a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator. (b) A generator who has not received an EPA identification number may obtain one by applying to the Administrator using EPA form 8700-12. Upon receiving the request the Administrator will assign an EPA identification number to the generator.
- 10. On September 7, 2017, based on the inspection and follow-up information, the Department issued Notice of Violation No. NOV-013-0917-HW to Coperion.
- 11. Coperion submitted TCLP analyses on August 8, 2017 and October 9, 2017 which demonstrated that recent filter cake waste produced from normal production runs had passed the TCLP analysis. Coperion also reviewed its process feedstock materials used during the four years prior to the inspection and on October 28, 2017 demonstrated, based on this generator knowledge, that these filter cake wastes were not hazardous waste. Coperion also submitted documentation on October 28, 2017 which demonstrated that the filter cake failing

- a TCLP analysis was of unique composition, generated from a one-time production run completed the last business day (May 26, 2017) before the CEI was conducted on May 30, 2017, with all such waste segregated and still on-site.
- 12. On September 26, 2017, Department staff met with representatives of Coperion to discuss the violations.
- 13. On October 20, 2017, Coperion submitted a Form 8700-12, Notification of Regulated Waste Activity, as a CESQG. EPA ID No. VAR000532846 was issued to Coperion on November 14, 2017. Coperion then notified as a SQG on December 1, 2017 (for the month of May, 2017), and most recently notified as a LQG on January 30, 2018.
- 14. As a result of receiving follow-up documentation and discussions with Coperion, NOV violation numbers 2-4, 6,7(a-c)(f-n) and 8-11 were determined not to apply and therefore are not included in this Consent Order.
- 15. All items, including failure to make proper hazardous waste determinations and labeling and dating of containers of hazardous waste, have been addressed.
- 16. Based on the results of the May 30, 2017 CEI, the September 26, 2017 meeting, and documentation submitted on April 26, 2017, May 4, 2017, May 5, 2017, July 17, 2017, July 31, 2017, August 4, 2017, August 8, 2017, August 14, 2017, September 28, 2017, October 9, 2017, October 10, 2017, October 20, 2017, October 28, 2017, December 1, 2017, January 3, 2018, February 23, 2018, March 1, 2018 and May 29, 2018, the Board concludes that Coperion has violated 40 CFR § 262.11, 40 CFR § 261.20 and 40 CFR § 262.34(a)(2) and (a)(3) as described in paragraphs C(4), C(7) and C(8) above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Coperion Corporation, and Coperion Corporation agrees to pay a civil charge of \$7,525.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

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Coperion Corporation shall include its Federal Employer Identification Number (FEIN), with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Coperion Corporation shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

- 1. The Board may modify, rewrite, or amend this Order with the consent of Coperion for good cause shown by Coperion, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
- 2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-013-0917-HW dated September 7, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
- 3. For purposes of this Order and subsequent actions with respect to this Order only, Coperion admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
- 4. Coperion consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
- 5. Coperion declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
- 6. Failure by Coperion to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
- 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
- 8. Coperion shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Coperion shall demonstrate that such

circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Coperion shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Coperion.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Coperion has completed all of the requirements of the Order;
 - b. Coperion petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Coperion.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Coperion from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Coperion and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

- 13. The undersigned representative of Coperion certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Coperion to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Coperion.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Coperion voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21st day of August, 2018.

Jeffrey L. Hurst, Regional Director Department of Environmental Quality Consent Order Coperion Corporation; EPA ID No. VAR000532846 Page 9 of 9

Coperion Corporation voluntarily agrees to the issuance of this Order.

Date: 6/29/15/ By: Coperion Corporation Commonwealth of Virginia City/County of WYTHE The foregoing document was signed and acknowledged before me this 29 day of June, 2018, by ROBERT EPPSESON SR. ENGINEER & CHS COMPLANT of Coperion Corporation, on behalf of the corporation. Elyaber Daran
Notary Public 7647225 Registration No. My commission expires: 6-30-19

Notary seal: